

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAWIT HABTEGIORGIS, a
married individual,

Plaintiff,

v.

OIC OF WASHINGTON; OIC OF
AMERICA, INC.; HENRY
BEAUCHAMP; and MULUGETA
BEYENE,

Defendants.

NO. CV-08-3077-RHW

**ORDER GRANTING MOTIONS
TO DISMISS; NOTICE OF
VOLUNTARY DISMISSAL**

Before the Court are Plaintiff's Notice of Voluntary Dismissal Without Prejudice of Defendants Beuchamp, Beyene, and OIC of America, Inc. (Ct. Rec. 17); Defendant Beyene's Motion to Dismiss - FRCP 12(b)(6), and for Attorneys Fees (Ct. Rec. 4); Defendant Beuchamp's Motion to Dismiss (Ct. Rec. 13); and Defendant OIC of America's Motion to Dismiss (Ct. Rec. 15). The motions were heard without oral argument.

The parties are in agreement that Defendants Beuchamp, Beyene, and OIC of America, Inc. should be dismissed. The question is whether Defendant Beyene is entitled to attorneys' fees.

Defendant Beyene relied on 42 U.S.C. § 2000e-5(k) and 28 U.S.C. § 1927 as authority for this Court to grant attorneys fees. Section 2000e-5(k) permits the Court to award attorneys' fees to successful defendants in Title VII actions where the suit is "frivolous, unreasonable, or without foundation." *Christianburg*

1 *Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978). Proof that a plaintiff's case is
2 frivolous, unreasonable, or groundless is not possible without a judicial
3 determination of the plaintiff's case on the merits. *Marquart v. Lodge 837, Intern.*
4 *Ass'n of Machinists and Aerospace*, 26 F.3d 842, 852 (8th Cir. 1994) (declining to
5 award attorneys fees where plaintiff voluntarily withdrew her complaint prior to a
6 judicial determination on the merits). Defendant Beyene is not a prevailing party
7 and the Court declines to exercise its discretion to award attorneys' fees.
8 Additionally, section 1927 requires a finding of recklessness or bad faith. *See In re*
9 *Keegan Mgmt. Co., Secs. Litig.*, 78 F.3d 431, 436 (9th Cir. 1996). The record does
10 not support a finding of recklessness or bad faith, rather it suggests negligence.

11 Accordingly, **IT IS HEREBY ORDERED:**

- 12 1. Defendant Beyene's Motion to Dismiss - FRCP 12(b)(6), and for
13 Attorneys Fees (Ct. Rec. 4) is **GRANTED**, in part, and **DENIED**, in part.
14 2. Defendant Beuchamp's Motion to Dismiss (Ct. Rec. 13) is **GRANTED**.
15 3. Defendant OIC of America's Motion to Dismiss (Ct. Rec. 15) is
16 **GRANTED**.
17 4. The claims against Defendant Beyene, Defendant Beuchamp and
18 Defendant OIC are **dismissed**, without prejudice.

19 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
20 Order and forward copies to counsel.

21 **DATED** this 9th day of April, 2009.

22 *S/ Robert H. Whaley*

23 ROBERT H. WHALEY
24 Chief United States District Judge

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